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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,877	07/07/2004	Martin Dottling	112740-975	1307

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EXAMINER

DILDINE JR, R STEPHEN

ART UNIT

PAPER NUMBER

2133

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/500,877	Applicant(s) DOTTLING ET AL.	
	Examiner R. Stephen Dildine	Art Unit 2133	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 27-65 and 67 is/are allowed.
- 6) ☒ Claim(s) 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>17December 2004</u> . | 6) <input type="checkbox"/> Other: ____  |

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***Information Disclosure Statement***

The information disclosure statement filed 17 December 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the cited foreign patent documents referred to therein has not been considered as indicated.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 66 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 66 recites "a receiver" which is a machine or manufacture, however its cancelled parent claim 1 is stated to be a "method". 35 U.S.C. 101, by the use of the singular form, only allows a single statutory class of invention to be recited in a single claim.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 66 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete in that it depends upon a rejected base claim.

Claim 66 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: those recited in cancelled base claim 1.

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***Allowable Subject Matter***

Claims 27-65 and 67 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: None of the cited references teach or fairly suggest signaling at least one of the one or more bit rate adaptation models from the transmitter to the receiver as recited in claims 27-53, 61-65 and 67 or effect signaling from the transmitter to the receiver in order to effect a distinction between self-decoding and non-self-decoding data packets as recited in claims 54-60.

***Conclusion***

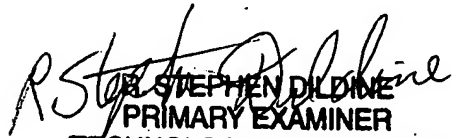
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gates (US 4,908,827) and Lee et al. (JP 2002/051030) disclose ARQ with puncturing, Elbwart et al. (US 2003/0120990), Golitschek et al. (US 2004/0049725) and Wengerter et al. (US 2005/0193307) teach ARQ having QAM modulation w/ changing signal constellation, Gollamundi et al., (US 2003/0126536), Dottling et al. (US 2004/0181618), Kim et al. (US 2003/0131303 A1) and the article by Riediger et al. show ARQ systems having rate adaptation and the article by Dammer et al. discloses the use of data puncturing in an IR type II HARQ system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Stephen Dildine whose telephone number is (571) 272-3820. The examiner can normally be reached on M - F 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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Art Unit 2133